



CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

Freedom of Information Act Regulations

AGENCY: Central Intelligence Agency.

ACTION: Notice of proposed rulemaking and request for public comment.

SUMMARY: The Central Intelligence Agency (CIA or the Agency) has undertaken and completed a review of its public regulations governing its implementation of the Freedom of Information Act (FOIA), as amended by the FOIA Improvement Act of 2016. As a result of this review, the Agency proposes to revise its FOIA regulations concerning the requirements for filing FOIA requests and CIA's procedures for processing and reviewing such requests. As required by the FOIA, the Agency is providing an opportunity for interested persons to submit comments on these proposed regulations.

DATES: Comments will be accepted until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All submissions must be in English. Comments may be submitted by the following methods: By mail to Brian C. O'Neill, Director, Advanced Data Lifecycle Solutions, Central Intelligence Agency, Washington, DC 20505; or by email to FedRegComments@ucia.gov. Please include "FOIA PROPOSED RULEMAKING" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Brian C. O'Neill; (571) 280-2899.

SUPPLEMENTARY INFORMATION: CIA is amending its regulations governing implementation of the FOIA, as amended by the FOIA Improvement Act of 2016. CIA has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations found in chapter 19 of title 32 of the Code of Federal Regulations.

These proposed regulatory changes are intended to enhance the administration and operations of the Agency's FOIA program by ensuring compliance with all legal requirements and by increasing the transparency and clarity of the regulations governing the Agency's FOIA program.

Statutory and Executive Order Reviews

Executive Order 12866 and 13563

These proposed regulations have been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review*, section 1, *Statement of Regulatory Philosophy and Principles*, and in accordance with Executive Order 13563, *Improving Regulation and Regulatory Review*, section 1, General Principles of Regulation. Because these proposed regulations do not constitute a significant regulatory action under section 3(f) of Executive Order 12866, they were not subject to mandatory prior review by the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/ OIRA) under section 6 of Executive Order 12866.

Paperwork Reduction Act

Because these proposed regulations do not involve a collection of information, the review and OMB clearance requirements of the Paperwork Reduction Act, 44 U.S.C. 3506 & 3507, do not apply.

Executive Order 12988

These proposed regulations meet the applicable standards set forth in Executive Order 12988, *Civil Justice Reform*.

Executive Order 13132

Because these proposed regulations will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, they do not constitute policies that have federalism implications under Executive Order 13132. Thus, the requirements of Executive

Order 13132 sections 2, 3, and 8, governing agency policies or regulations do not apply.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), CIA has reviewed these proposed regulations and certifies that they will not have a significant economic impact on a substantial number of small entities, and thus no regulatory flexibility analysis is required. These proposed regulations pertain to CIA's policies and practices for processing FOIA requests, and do not impose any new requirements on small entities.

Unfunded Mandates Reform Act of 1995

These proposed regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a) & 1533(a).

Small Business Regulatory Enforcement Fairness Act of 1996

These proposed regulations will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Thus, they do not constitute major rules as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804.

National Environmental Policy Act of 1969

CIA has reviewed these proposed regulations for purposes of the National Environmental Policy Act of 1969 (NEPA) and has determined that these proposed regulations do not constitute "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(C).

List of Subjects in 32 CFR Part 1900

Administrative practice and procedure, Classified information, Freedom of information.

As stated in the preamble, the CIA proposes to revise 32 CFR part 1900 to read as follows:

PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

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- 1900.01 Authority and purpose.
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- 1900.45 Notification of decision and right of judicial review.

Authority: 5 U.S.C. 552; 50 U.S.C. 3001 *et seq.*; 50 U.S.C. 3501 *et seq.*; 50 U.S.C. 3141; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

General

§ 1900.01 Authority and purpose.

(a) This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and in accordance with the CIA Information Act of 1984 (50 U.S.C. 3141); section 102A(i) of the National Security Act of 1947, as amended (50 U.S.C. 3024(i)); and section 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 3507). It contains procedures that CIA follows in processing requests for records submitted under the FOIA. The procedures in this part should be read in conjunction

with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Fee Guidelines).

(b) Requests made by individuals for records about themselves under the Privacy Act of 1974 (5 U.S.C. 552a) are processed in accordance with CIA's Privacy Act regulations, set forth at 32 CFR part 1901, as well as under this part.

(c) Other than as expressly provided in this part, this part creates no right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

§ 1900.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator.

(b) *Agency Release Panel (ARP)* means the Agency's forum for reviewing information review and release policy, assessing the adequacy of resources available to all Agency declassification and release programs, and considering administrative appeals in accordance with this part.

(c) *Chief FOIA Officer* means the senior CIA official, at the CIA's equivalent of the Assistant Secretary level, who has been designated by the Director of the CIA (DCIA) to have Agency-wide responsibility for the CIA's efficient and appropriate compliance with the FOIA.

(d) *CIA Information and Privacy Coordinator* or *Coordinator* means the official who serves as the Agency manager of information review and release activities implementing the FOIA.

(e) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail.

(f) *Direct costs* means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages*, which means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction*, which means generation of a copy of a requested record in a form appropriate for release;

(3) *Review*, which means all time expended in preparing a record for release, including examining a record to determine whether any portion must be withheld pursuant to law and in effecting any necessary deletions but excludes personnel hours expended in resolving general legal or policy issues; and

(4) *Search*, which means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids, including time spent determining whether records located during a search are responsive to the request.

(g) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the Agency in determining the proper fee category and the Agency may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial use*. Requests in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests, which can include furthering those interests through litigation.

(2) *Educational or non-commercial scientific institution, or a representative of the news media*--(i) *Educational or non-commercial scientific institution*. Requests made under the auspices of an accredited United States institution engaged in scholarly or scientific research and which are for information not for commercial use, but rather intended to be used in specific scholarly or scientific works.

(ii) *Representative of the news media*. Requests from any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn

the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and individual or corporate publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered a representative of the news media. A publishing contract would be the clearest proof that publication is expected, but the Agency may also look to the past publication record of a requestor in making this determination.

(3) *All other.* Requests not described in paragraph (g)(1) or (2) of this section.

(h) *FOIA Public Liaison* means the CIA supervisory official(s) who shall assist in the resolution of any disputes between a FOIA requester and the Agency and to whom a FOIA requester may direct a concern regarding the service he or she has received from CIA and who shall respond on behalf of the Agency as prescribed in this part.

(i) *FOIA Requester Service Center* means the office within the CIA where a FOIA requester may direct inquiries regarding the status of a FOIA request he or she filed at the CIA, requests for guidance on narrowing or further defining the nature of scope of his or her FOIA request, and requests for general information about the FOIA program at the CIA.

(j) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue.

§ 1900.03 Contact for general information and requests.

(a) A member of the public seeking to file a FOIA request or an administrative appeal must direct a written request or appeal via mail to: Information and Privacy Coordinator, Central

Intelligence Agency, Washington, DC 20505, or online at:

https://www.foia.cia.gov/foia_request/form, in accordance with the requirements of this part.

(b) Requesters may view the status of pending FOIA requests at

<https://www.cia.gov/readingroom/request/status>. In addition, inquiries regarding the status of a

FOIA request, obtaining guidance on narrowing or further defining the nature or scope of a

FOIA request, or obtaining general information about the FOIA program at CIA, may be directed to the CIA FOIA Requester Service Center, Central Intelligence Agency, Washington, DC

20505, via facsimile at (703) 613-3007, or via telephone at (703) 613-1287. Collect calls cannot be accepted.

(c) Concerns, suggestions, comments, or complaints regarding the service received from CIA or regarding the Agency's general administration of the FOIA may be directed to the FOIA Public Liaison, Central Intelligence Agency, Washington, DC 20505, via facsimile at 703-613-3007, or via telephone at 703-613-1287. Collect calls cannot be accepted.

§ 1900.04 Suggestions and complaints.

The CIA remains committed to administering a results-oriented and citizen-centered FOIA program, to processing requests in an efficient, timely and appropriate manner, and to working with requesters and the public to continuously improve Agency FOIA operations. The Agency welcomes suggestions, comments, or complaints regarding its administration of the FOIA.

Members of the public shall address all such communications to the FOIA Public Liaison as specified at § 1900.03(c). The Agency may respond as determined feasible and appropriate under the circumstances. Requesters seeking to raise concerns about the service received from the CIA FOIA Requester Service Center may contact the FOIA Public Liaison after receiving an initial response from the CIA FOIA Requester Service Center. The FOIA Public Liaison shall be responsible for assisting in reducing delays and assisting in the resolution of disputes between a FOIA requester and the Agency.

Filing of FOIA Requests

§ 1900.11 Preliminary information.

(a) Members of the public shall address all communications to the CIA Coordinator as specified at § 1900.03. Any requests for access to records which are not directed to the Information and Privacy Coordinator, in accordance with the requirements set forth in §§ 1900.03 and 1900.12, shall not be considered proper FOIA requests.

(b) The CIA shall not accept a request for records under the FOIA that does not have a physical mailing address or email address where CIA can send a response or other correspondence related to the request.

(c) The CIA shall not accept a request for records under the FOIA or an appeal of an adverse determination regarding a FOIA request submitted by a member of the public who owes outstanding fees for information services at this or other Federal agencies and will terminate the processing of any pending requests submitted by such persons to the CIA.

(d) The CIA shall not accept requests for records under the FOIA submitted by any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof, or from any representative of such a government entity.

§ 1900.12 Requirements as to form and content.

(a) *Required information.* Requests must reasonably describe the records of interest sought by the requester, as set forth at 5 U.S.C. 552(a)(3). This means that documents must be described sufficiently so that Agency professionals who are familiar with the subject area of the request are able, with a reasonable effort, to determine which particular records are within the scope of the request. In order to assist CIA in identifying the specific records sought, all requesters are encouraged to be as specific as possible in describing the records they are seeking by including, for example, the relevant date or date range, the title of the record, the type of record (such as memorandum or report), the specific event or action to which the record refers, and the subject matter. Requests for electronic communications should attempt to specify a sender, recipient,

date range, and subject or keyword. Extremely broad or vague requests or requests requiring research do not satisfy the requirement that a request be “reasonably described.”

(b) *Requirements as to identification of requester.* (1) Individuals seeking access to records concerning themselves shall provide their full (legal) name, address, date and place of birth together with a signed statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If the Agency determines that this information is not sufficient, the Agency may request additional or clarifying information.

(2) Attorneys or other individuals retained to represent a requester shall provide evidence of such representation by submission of a representational agreement or other document which establishes the relationship with the requester.

(c) *Additional information for fee determination.* A requester should provide sufficient information to allow the Agency to determine the appropriate fee category for the request. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(d) *Additional communication with requester.* Although the Agency is not required to answer questions, create records, or perform research in response to a FOIA request, when the request lacks sufficient clarity to allow the records to be located with a reasonable effort, the Agency will provide the requester with an opportunity to narrow or further define the nature or scope of the request. Additionally, individuals may contact the CIA FOIA Requester Service Center for the purpose of obtaining recommendations as to how to frame or narrow a particular request.

§ 1900.13 Fees for record services.

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions in paragraphs (b) through (j) of this section relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever the Agency determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served; or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Chair of the Agency Release Panel via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth in § 1900.01.

(d) *Time for fee waiver requests and appeals.* Fee waiver requests and appeals must be directed to the Coordinator in accordance with §§1900.03 and 1900.11. It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: If processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision. When making fee waiver requests or appeals, no particular format is required other than a statement of the basis for the request or appeal.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, the Agency will request a specific commitment from the requester to pay applicable fees when the Agency estimates that fees will exceed \$100.00. The Agency will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed in the absence of a response from the requester. This action, of course, would not prevent a requester from refiling the FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* The Agency may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed \$250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester may not pay the fees which would be accrued by processing the request. The Agency will hold in abeyance for forty-five (45) days those requests where deposits have been requested and will thereafter deem the request closed in the absence of a response from the requester.

(g) *Schedule of fees*—(1) *In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

Table 1 to Paragraph (g)(1)

<u>Personnel Search and Review</u>		
Clerical/Technical	Quarter hour	\$5.00
Professional/Supervisory	Quarter hour	\$10.00
Manager/Senior Professional	Quarter hour	\$18.00
<u>Duplication</u>		
Photocopy (b&w, standard, or legal)	Per page	\$0.10
Photocopy (color, standard, or legal)	Per page	\$1.00
Microfiche	Per frame	\$0.20
CD (bulk recorded)	Each	\$10.00
CD (recordable)	Each	\$20.00
Pre-printed (if available)	Per 100 pages	\$5.00
Published (if available)	Per item	NTIS

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to the Agency of a particular item is less than listed in the schedule in table 1 to

paragraph (g)(1) of this section (e.g., a large production run of a document resulted in a cost less than \$5.00 per hundred pages), then the actual lesser cost will be charged. Items published and available at the National Technical Information Service (NTIS) may also be available from CIA pursuant to this part at the NTIS price as authorized by statute.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute will be charged. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Charging fees.* In responding to FOIA requests, CIA shall assess fees as follows unless a waiver or reduction of fees has been granted under paragraph (b) of this section:

(1) *Commercial use requesters.* Charges which recover the full direct costs related to search, review, and duplication of responsive records (if any);

(2) *Educational or non-commercial scientific institutions, or representatives of the news media.* Charges for duplication of responsive records (if any) beyond the first 100 pages; and

(3) *All other requesters.* Charges which recover the full direct costs related to search and duplication of responsive records (if any) beyond the first two hours of search time and first 100 pages.

(i) *Limitations on collection of fees—*(1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to the Agency of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of [EFFECTIVE DATE OF FINAL RULE], is deemed to be \$10.00.

(2) *Requests for personal information.* No fees will be charged for U.S. citizens or lawful permanent residents seeking records about themselves under the Privacy Act; such requests are

processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(3) *Untimely response.* If CIA fails to comply with the FOIA's time limits for responding to a request, CIA will not charge search fees or, in the case of requesters in the educational or non-commercial scientific institutions or representatives of the news media category, duplication fees, except as set forth in paragraph (i)(4) of this section.

(4) *Special circumstances.* (i) If CIA determines that unusual circumstances as defined by the FOIA apply and the Agency has provided timely written notice to the requester, a failure to comply with the time limit shall be excused an additional ten (10) days.

(ii) If CIA determines that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Agency may charge search fees or, in the case of requesters in the educational or non-commercial scientific institutions or representatives of the news media category, duplication fees if the Agency has provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and has discussed with the requester via written mail, e-mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with the requirements of the FOIA, 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, CIA may charge all applicable fees incurred in the processing of the request.

(iii) If a court determines that exceptional circumstances exists, as defined in the FOIA, 5 U.S.C. 552(a)(6)(C), a failure to comply with the time limit shall be excused for the length of time provided by the court order.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, the Agency may aggregate the requests and charge the applicable fees.

§ 1900.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. The Agency will endeavor within twenty (20) days to provide an accurate estimate, and, if a request is thereafter submitted, the Agency will not accrue or charge fees in excess of our estimate without the specific permission of the requester.

CIA Action on FOIA Requests

§ 1900.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§ 1900.11 through 1900.13 shall be considered proper FOIA requests and will be processed under the Freedom of Information Act, 5 U.S.C. 552, this part, and in accordance with any other applicable statutes. Upon receipt, the Agency shall within ten (10) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the CIA components reasonably believed to hold responsive records.

(b) *Previously-released records.* As an alternative to extensive tasking, search, and review, some requesters may wish to consider limiting the scope of their requests to previously-released records. Searches of such records can often be accomplished expeditiously. Moreover, requests for such records that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in limiting their requests to previously released Agency information, in lieu of traditional processing of a FOIA request, should so indicate in their correspondence.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the mere fact of their existence or nonexistence is itself classified under Executive Order 13526 (or successor orders), or revealing of intelligence sources and methods protected pursuant to section 102A(i)(1) of the National Security Act of 1947. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise the requester of the right to an administrative appeal.

(d) *Time for response.* The Agency will make every effort to respond to a proper FOIA request within the statutory 20-day time period after receipt of the request. However, the current volume of requests routinely requires that the Agency seek additional time from a requester pursuant to § 1900.33.

§ 1900.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* (1) CIA components tasked pursuant to a FOIA request shall conduct a reasonable search of all relevant record systems within their areas of responsibility which have not been exempted from search, review, and disclosure under the FOIA by the CIA Information Act of 1984 and which are reasonably likely to contain records responsive to the request. They shall:

- (i) Determine whether any responsive records exist;
- (ii) Determine whether, and to what extent, any FOIA exemptions, as set forth in 5 U.S.C. 552(b), apply to the responsive records;
- (iii) Review the exempt records to determine whether they contain any reasonably segregable, non-exempt material;
- (iv) Approve the disclosure of all non-exempt records, or portions of records, within their areas of responsibility; and
- (v) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another component or interested party.

(2) In making the decisions discussed in paragraph (a)(1) of this section, the CIA component officers shall be guided by the applicable law as well as the procedures specified at §§ 1900.31 and 1900.32 regarding confidential commercial or financial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable, any CIA records containing information originated by other CIA components shall be forwarded to those entities for appropriate action in accordance with paragraph (a) of this section. Records originated by other Federal agencies or

CIA records containing other Federal agency information shall be forwarded to such agencies for appropriate action in accordance with the applicable procedures of each agency.

§ 1900.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the Central Intelligence Agency and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), the Agency will promptly inform the requester of its determination regarding the request. With respect to any records that the Agency determines may be released, the Agency will provide copies. For any records or portions of records that the Agency determines must be denied, the Agency shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a CIA “reading room” in the metropolitan Washington, DC, area. Access will be granted after applicable and accrued fees have been paid. All such requests shall be in writing and addressed pursuant to § 1900.03. The records will be available at such times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired. The Agency has an electronic FOIA reading room on its website, located at www.cia.gov/readingroom, which contains records that the Agency has previously publicly released under FOIA as well as under other information review and release activities.

Additional Administrative Matters

§ 1900.31 Procedures for business information.

(a) *In general.* Business information obtained by the Central Intelligence Agency from a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means confidential commercial or financial information obtained by the United States Government from a submitter that is reasonably believed to contain information exempt from disclosure under 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments. This term does not include any other Federal Government entity.

(b) *Designation of confidential commercial or financial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial or financial information and hence protected from required disclosure pursuant to 5 U.S.C. 552(b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request—(1) Notice to submitters.* The Agency shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information if, after reviewing the request, the responsive records, and, if applicable, any appeal by the requester, the Agency determines that it may be required to release the records, provided:

(i) The submitter has in good faith designated the information as confidential commercial or financial information; or

(ii) The Agency believes the information may be exempt from disclosure pursuant to 5 U.S.C. 552(b), but is unable to make that determination without additional information; and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial or financial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) The Agency shall specify a reasonable time period within which the submitter must respond to the notice described in paragraphs (c)(1) and (2) of this section with a detailed statement identifying any claims of confidentiality, supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide the Agency and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(iii) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objections to disclosure of the business information identified therein.

(4) *Decision and notice of intent to disclose.* (i) The Agency shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Agency determines that it must disclose the requested records, notwithstanding the submitter's objections, the Agency shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the Agency shall also notify the requester and, if the Agency notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, the Agency shall promptly notify the submitter. The submitter, as specified in paragraph (a)(2) of this section, shall provide such litigation assistance as required by the Agency and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if the Agency determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or Federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the Agency will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1900.32 Procedures for information concerning other persons.

(a) Personal information concerning individuals other than the requester shall not be disclosed in response to a FOIA request if, as set forth in 5 U.S.C. 552(b)(6), the release of such information would constitute a clearly unwarranted invasion of personal privacy. *Personal information* is any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government

possession of such information. *Public interest* means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) In making the required determination under this section and pursuant to 5 U.S.C. 552(b)(6), the Agency will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) A requester seeking information on a third party is encouraged to provide a signed affidavit or declaration from the third party waiving all or some of their privacy rights, or to submit proof that the third party is deceased (e.g., a copy of a death certificate, a published obituary, etc.).

Third-party waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1900.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

- (1) The totality of resources available to the component;
- (2) The business demands imposed on the component by the DCIA or otherwise by law;
- (3) The information review and release demands imposed by the Congress or other governmental authority; and
- (4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities—*(1) *Chief FOIA Officer.* The Chief FOIA Officer shall monitor the Agency's compliance with the requirements of the FOIA and administration of its FOIA program. The Chief FOIA Officer shall keep the DCIA, the General Counsel of the CIA, and other officials appropriately informed regarding the Agency's implementation of the FOIA

and make recommendations, as appropriate. The Chief FOIA Officer shall designate one or more CIA FOIA Public Liaisons. The CIA FOIA Public Liaison shall be responsible for assisting in reducing delays and assisting in the resolution of disputes between requesters and the Agency.

(2) *Multi-track processing.* The Agency shall exercise due diligence in its responsibilities under the FOIA. The Agency shall designate a specific track for requests that are granted expedited processing, as set forth in § 1900.34. In addition, although the Agency will generally process requests and administrative appeals on a “first in, first out” basis, based upon a reasonable allocation of available resources, the Agency may designate additional processing queues that distinguish between simple and more complex requests based on the estimated amount of time or work needed to complete the processing of the request. The Agency may provide requesters in a slower queue an opportunity to limit the scope of their request in order to qualify for faster processing.

(c) *Requests for extension of time.* When the Agency is unable to meet the statutory time requirements of the FOIA due to unusual circumstances, as defined in the FOIA, and the Agency extends the time limit on that basis, the Agency shall, before the expiration of the 20-day time limit to respond, notify the requester in writing of the unusual circumstances involved and of an estimated date by which processing of the request is expected to be completed. When the extension exceeds 10 days, the Agency shall, as described in the FOIA, provide the requester with an opportunity to modify the scope of the request or arrange an alternative time period for processing the original or modified request. CIA’s FOIA Requester Service Center or the CIA FOIA Public Liaison are available to assist in this process.

§ 1900.34 Requests for expedited processing.

(a) *Expedited processing requests.* Requests for expedited processing shall be submitted to the Coordinator in accordance with §§ 1900.03, 1900.11, and 1900.12. Such requests will be approved only when a compelling need is established to the satisfaction of the Agency. Within ten (10) days of receipt of a request for expedited processing, the Agency will decide whether to

grant expedited processing and will notify the requester of its decision. A *compelling need* is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal Government activity.

(b) *Expedited processing appeals*. Denials of requests for expedited processing may be appealed to the CIA's Agency Release Panel via the Coordinator and shall be acted upon expeditiously.

CIA Action on FOIA Administrative Appeals

§ 1900.41 Designation of authority to hear appeals.

(a) *Agency Release Panel (ARP)*. Appeals of initial adverse decisions under the FOIA shall be reviewed by the ARP which shall issue the final Agency decision.

(b) *ARP membership*. The ARP is chaired by the Director, Advanced Data Lifecycle Solutions (ADLS) (or the Deputy Director, ADLS, acting on the Director's behalf), and is composed of the Information Review Officers from the various Directorates, a voting representative of the Office of General Counsel, as well as the representatives of the various CIA release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP. The Chair may request interested parties to participate when special equities or expertise are involved.

§ 1900.42 Right of appeal and appeal procedures.

(a) *Right of appeal*. A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, or no records are located in response to a request. In addition, requesters may appeal denials of requests for expedited processing and fee waivers, as well as the adequacy of a search for records responsive to a request. The Agency will apprise all

requesters in writing of their right to file an administrative appeal to the ARP through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within ninety (90) days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in § 1900.03. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another Federal agency.

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the relevant components for appropriate action.

(e) *Time for response.* The Agency shall attempt to complete action on an appeal within twenty (20) days of the date of receipt, except for appeals of denial of expedited processing, for which the Agency shall attempt to complete action within ten (10) business days of the date of receipt. The current volume of requests, however, often requires that the Agency request additional time from the requester pursuant to § 1900.33. In such event, the Agency will inform the requester of the right to judicial review.

§ 1900.43 [Reserved]

§ 1900.44 Action by appeals authority.

(a) The Coordinator, acting in the capacity of Executive Secretary of the ARP, shall place administrative appeals of FOIA requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide the ARP membership with a summary of the request and issues raised on appeal for the Panel's consideration, and make available to the Panel the complete administrative record of the request consisting of the

request, the document(s) at issue (in redacted and full-text form), if any, and the findings and recommendations of the relevant components.

(b) The ARP shall determine whether an appeal before the Panel is meritorious. The ARP may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the Executive Secretary of the ARP, refer such matters to the CIA Chief Data Officer (CDO) for resolution. In the event of a disagreement with any decision by the CDO, Directorate or Independent Office heads may appeal to the CIA Chief Operating Officer (COO) for a final Agency decision. The final Agency decision shall reflect the vote of the ARP, unless the CDO or COO disagrees with the ARP and makes a superseding final Agency decision.

(c) Appeals of denials of requests for fee waivers or reductions and/or denial of requests for expedited processing shall go directly from the Coordinator to the Agency Release Panel for a final Agency determination.

§ 1900.45 Notification of decision and right of judicial review.

The Executive Secretary of the ARP shall promptly prepare and communicate the final Agency decision to the requester. With respect to any adverse Agency determination, that correspondence shall state the reasons for the decision, and include a notice of a right to judicial review.

Dated: June 13, 2022.

Brian C. O'Neill,

Director, Advanced Data Lifecycle Solutions.

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